

**IN THE U.S. DISTRICT COURT FOR MARYLAND
Southern Division**

BEYOND SYSTEMS, INC.

Plaintiff,

-vs-

WORLD AVENUE U.S.A., LLC, et al.

Defendants.

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Case No. 8:08-cv-00921-PJM

**PLAINTIFF'S MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT**

Plaintiff Beyond Systems, Inc. ("BSI"), by and through undersigned counsel, respectfully moves this court for leave to file the Second Amended Complaint *nunc pro tunc*, pursuant to Rule 15 of the Federal Rules of Civil Procedure and Local Rule 103.6. In support of the present motion, Plaintiff states as follows :

1. On April 28, 2009, this Court entered a Scheduling Order pursuant to Local Rule 103.9 to govern this case. *See* DE 58.

2. The original deadline for amending the complaint and joining new parties was June 12, 2009.

3. On May 6th, this Court approved the Parties' Joint Request for Modification of the Scheduling Order. The modified order extended the discovery period for four months and

adjusted the remaining items by eight weeks to accommodate the milestones in the original Scheduling Order issued by this Court. *See* DE 64 & 65.

4. The modified order moved the deadline for amending the complaint and joining new parties to August 7, 2009.

5. On November 13th, the Court approved the Parties' Joint Motion for Modification of the Scheduling Order. *See* DE 128 approving Jt. Motion at DE 127.

6. The modified order moved the deadline for amending the complaint and joining new parties to January 19, 2010.

7. On January 20th, the Court approved the Parties' Joint Stipulation Regarding Docket Entries 142 through 154. *See* DE 156 approving Jt. Stipulation at DE 157.

8. In the Joint Stipulation, the Parties agreed to amending pleadings and adding parties until February 27th.

9. The Joint Stipulation resolved a number of discovery matters, including the days when Defendant World Avenue U.S.A., LLC was to provide a 30(b)(6) witness for its first ESI deposition. *See* DE 156 at ¶ 4.

10. On March 1st, this Court granted Plaintiff's Motion for Extension of Time to File Amended Complaint and the Joinder of Additional Parties until March 8th. *See* DE 173 granting Plaintiff's Motion at DE 171.

11. In its Motion for an extension of time for one week, Plaintiff indicated that it had sought consent from the Defendants for the one-week extension of time to file the Amended

Complaint. Rather than consent to Plaintiff's request for additional time, Defendants sought to place additional constraints on the Plaintiff's filings as a condition of consent. *See* DE 171 at ¶ 5.

12. On November 13, 2008, this Court granted Defendant World Avenue Holdings, LLC's ("WAH") Motion to Dismiss the Complaint without prejudice, and granted Plaintiff's thirty (30) days leave to amend the Complaint to provide additional details to support their allegations against Defendant WAH. *See* DE 28.

13. On December 22nd, Plaintiff filed its First Amended Complaint, alleging new details regarding the participation of Defendants, including WAH, in the claims alleged by the Plaintiff.

14. On August 26, 2009, Plaintiff finally deposed the first of Defendant WAH's corporate witnesses in a 30(b)(6) deposition, Fidel Dhana, the vice president of finance and corporate "controller."

15. On February 18, 2010, Plaintiff finally deposed Defendant World Avenue U.S.A., LLC's ESI witness.

16. The Second Amended Complaint attached to the present motion for filing, represents the Plaintiff's attempt to include all the relevant parties, to clarify factual allegations in the Complaint, and to update the number of emails and contacts at issue in this matter to include emails received since the Complaint was filed.

17. The Second Amended Complaint adds additional parties including Defendants TheUseful, LLC ("TheUseful"), World Avenue Management, Inc. ("WAMI"), World Avenue IP, LLC ("WAIP"), NiuNiu Ji d/b/a Jinius Corporation ("JINIUS"), Intrepid Investments, LLC

(“INTREPID”); Q Interactive, Inc. (“Q INTERACTIVE”); Vente, Inc. (“VENTE”); Bristol Interactive, LLC d/b/a Kitara Media (“KITARA”), Niuniu Ji (“JI”), and John Does 1- 20.

18. The Redline Copy attached compares the First Amended Complaint to the Second Amended Complaint.

19. Plaintiff believes that the addition of these new parties will lead to a more efficient resolution of the matter, as it will reduce the need for duplicative litigation and bring all the applicable parties in a single action.

20. Plaintiff filed the Second Amended Complaint this morning just after midnight. However, Plaintiff did not file the Redline Copy or Request the Motion for Leave to File pursuant to the Federal Rules of Civil Procedure, Rule 15, as well as the Local Rule regarding filing amended complaints. *See* Local Rule 103.6.

21. Therefore, Plaintiff respectfully moves this Court to accept the attached Second Amended Complaint and exhibits for filing as of March 8, 2010, as well as a Redline copy filed pursuant to the Local Rules.

Respectfully submitted,

/s/
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Attorneys for Plaintiff

DATED: March 9, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of March 2010, the foregoing *Motion for Leave to File Second Amended Complaint* was filed electronically in accordance with the Court's CM/ECF procedures, and served upon the below named counsel in the manner indicated :

VIA CM/ECF NOTIFICATION

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/s/
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